

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ALBERT BORRERO,

Plaintiff,

-against-

THE CHILDREN'S VILLAGE,

Defendant.
-----X

Index No. :

SUMMONS

Plaintiff designates
BRONX COUNTY
as the place of trial

The basis of this venue is
Plaintiff's residence at the
time of the commencement of
this action

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you with the State of New York); and in case of your failure to appear or answer, judgement will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
September 10, 2019

BY:



John J. Meehan, Esq.
JOSEPH & NORINSBERG, LLC
Attorneys for Plaintiff
225 Broadway, Suite 2700
New York, N.Y. 10007
(212) 227-5700

TO: The Children's Village
1 Echo Hill
Dobbs Ferry, New York, 10522

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VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff ALBERT BORRERO, by his attorney JOSEPH & NORINSBERG, LLC, bring this action against defendant THE CHILDREN'S VILLAGE ("VILLAGE"), alleging, on personal knowledge as to him and on information and belief as to all other matters, as follows:

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendant pursuant to CPLR §§ 301 and 302, in that the Defendant resides in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Bronx, pursuant to CPLR § 503, in that the plaintiff is a resident of the County of Bronx at the time of the commencement of this action.

CHILD VICTIMS ACT

4. Each of Plaintiff's causes of action is timely pursuant to the Child Victims Act that was enacted on February 14, 2019. Plaintiff alleges that the Defendant committed intentional or

negligent acts or omissions which resulted in Plaintiff suffering physical, psychological or other injuries or conditions as a direct and proximate result of conduct which constitutes a sexual offense committed against a child less than eighteen years of age, as defined in New York Penal Law § 130. This action, moreover, has been filed not earlier than six months after, and not later than one year and six months after, the effective date of the newly added CPLR § 214-g.

PARTIES

5. Plaintiff ALBERT BORRERO is an individual currently residing the County of Bronx, in the City and State of New York.

6. Defendant THE CHILDREN'S VILLAGE is a corporation organized and existing under the laws of the State of New York, with its principal office at 1 Echo Hill, Dobbs Ferry, New York, 10522, and operates The Children's Village, located at the same address.

7. At all relevant times, Defendant VILLAGE created, oversaw, managed, controlled, directed and operated The Children's Village.

8. At all relevant times, Defendant VILLAGE managed, supervised, employed, directed and/or controlled staff, counselors, and mentors assigned to work at the Children's Village, including Robert Garcia.

9. At all relevant times, staff, counselors, and mentors, including Robert Garcia, assigned to the Children's Village were agents, managers, directors, or employees of Defendant VILLAGE.

STATEMENT OF FACTS

10. Plaintiff ALBERT BORRERO had a difficult family life, and entered the Children's Village, located at 1 Echo Hill, Dobbs Ferry, New York, 10522, in December 1982 after his father was arrested for dealing drugs. Mr. Borrero was six-years-old when he entered the

Children's Village.

11. During the times relevant to the allegations set forth herein, Defendant VILLAGE was responsible for overseeing, managing, controlling, directing and operating The Children's Village.

12. In approximately 1986, plaintiff ALBERT BORRERO was repeatedly sexually assaulted by Robert Garcia ("Garcia"), the mentor assigned to him by defendant VILLAGE.

13. Through his position at, within, or for defendant VILLAGE, Robert Garcia was put in direct contact with Plaintiff ALBERT BORRERO.

14. Robert Garcia would take ALBERT BORRERO away from the Children's Village campus for extended periods of time, molest and commit sexual assaults on plaintiff.

15. Garcia used these encounters, gained through his position as a mentor at the The Children's Village, which granted him access to Defendant VILLAGE's young clients, to sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

16. On multiple occasions, Garcia forcibly grabbed Plaintiff Albert Borrero and anally penetrated him. Plaintiff, who was just ten years old at the time of these sexual assaults, told supervisors at defendant VILLAGE about his abuse, and pressed criminal charges against Garcia.

17. Plaintiff ALBERT BORRERO took the stand during the criminal prosecution of Garcia, both at Grand Jury and at the criminal trial. Garcia was eventually convicted of all charges.

18. At all times material hereto, Garcia was under the management, supervision, employ, direction and/or control of Defendant VILLAGE.

19. Defendant VILLAGE knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Garcia

who repeatedly sexually abused Plaintiff.

20. Upon information and belief, it was common knowledge amongst the children, staff, employees, and mentors at the Children's Village that Garcia would frequently molest young boys.

21. Upon information and belief, Garcia was convicted of sexually abusing minors and had sexually assaulted multiple minors prior to doing so with Plaintiff ALBERT BORRERO.

22. Despite this criminal conviction, defendant VILLAGE attempted to cover-up the molestation, and even attempted to justify the actions of Garcia.

23. Indeed, Michael V. Osborn, M.D., a child and adolescent psychiatrist, and an employee of defendant VILLAGE, wrote in his evaluation, "During his third year in care at Children's Village, Albert was sexually abused by a volunteer. At the time, *it was clear that Albert was a willing partner in the sexual encounters.*" (emphasis added). Thus, Children's Village effectively *blamed* a 10-year-old child for being the victim of a sexual assault. (Ex. A, Relevant pages Dr. Osborn's psychiatric evaluation, dated November 3, 1989).

24. As a matter of law, it was impossible for Plaintiff ALBERT BORRERO to be a "willing partner" in any type of sexual encounter with Garcia.

25. As a matter of law, it was impossible for Plaintiff ALBERT BORRERO to have "consented" to any sexual activities with Robert Garcia.

26. Defendant VILLAGE had the responsibility to manage, supervise, control and/or direct the staff, employees, and mentors who served at the The Children's Village, and specifically had a duty not to aid known sexual predators such as Garcia by assigning, maintaining, and/or appointing them to positions with access to minors.

27. Defendant VILLAGE had a duty to Plaintiff to ensure that Defendant VILLAGE

did not offer opportunities for known sexual predators to approach and assault vulnerable children. Defendant VILLAGE knew and/or should have known that Garcia used his position as a mentor to harm minor children, including Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

28. In complete dereliction of its duties, VILLAGE repeatedly allowed staff members, and/or “volunteers” such as Garcia, to remove its children away from the group home and take them to unknown and unsupervised locations without any other staff members being present.

29. In complete dereliction of its duties, VILLAGE would allow Garcia on its campus with his firearm.

30. In complete dereliction of its duties, VILLAGE would not have security guards present on weekends, so Garcia was free to come and take plaintiff off campus as he pleased.

31. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendant’s actions, as well as other damages related thereto, and continues to suffer from these damages to this day.

32. As a direct result of Defendant’s conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity.

FIRST CAUSE OF ACTION
(Negligent Hiring/Retention/Supervision/Direction)

33. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

34. Defendant VILLAGE at all relevant times represented or otherwise indicated to the parents of the defendant VILLAGE's children that minor children would be physically safe while in the presence of the counselors, staff, and mentors assigned to The Children's Village. Defendant entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the presence of counselors, staff, and mentors, Plaintiff would be kept safe and that that counselors, staff, and/or mentors would not sexually abuse Plaintiff.

35. Defendant VILLAGE owed a duty of care to all minor persons, including Plaintiff, who was likely to come in contact with its employees, agents, coaches, and/or mentors or were under the supervision of their employees, agents, coaches, and/or mentors to ensure that their employees, agents, coaches, and/or mentors did not use their assigned positions to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York, specifically Article 130 of the New York Penal Law.

36. Defendant VILLAGE, knew or should have known, of Garcia's propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of, the injuries' occurrence.

37. The sexual abuse of children by adults, including staff, counselors and mentors, is a foreseeable result of negligence.

38. Garcia sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while working in his capacity as a child mentor for Defendant VILLAGE.

39. Defendant VILLAGE, negligently recruited, retained, directed, and supervised Garcia, as it knew or should have known that Garcia posed a threat of sexual abuse to children, including Plaintiff herein.

40. Defendant VILLAGE, was negligent in failing to properly supervise Garcia.

41. Defendant VILLAGE, was negligent in failing to properly vet Garcia for his role

as a mentor and a “volunteer.”

42. At all times material hereto, Defendant VILLAGE, was willful, wanton, malicious, reckless and/or outrageous in its disregard for the rights and safety of Plaintiff, and demonstrated such moral turpitude as to cause substantial harm to the community-at-large as well as Plaintiff, and, as such, Defendant’s conduct gives rise to punitive damages.

43. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

44. By reason of the foregoing, the Defendant VILLAGE, is liable to the Plaintiffs, for compensatory damages, and punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

45. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

46. At all times material hereto, with regard to the allegations contained herein, Garcia was under the supervision, direction and/or control of Defendant VILLAGE.

47. Defendant VILLAGE, owed Plaintiff, at all relevant times, a ten-year-old boy, a duty to protect him from Garcia’s sexual deviancy and the consequential damages, both prior to and/or subsequent to the abuser’s misconduct.

48. Defendant VILLAGE, knew, or was negligent in not knowing, Garcia posed a threat of sexual abuse to children (including Plaintiff).

49. The acts of Garcia were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his appointment, assignment, and/or agency with Defendant VILLAGE.

50. Defendant VILLAGE’s willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein

at length.

51. Defendant VILLAGE gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others; failed adequately to supervise the activities of Defendant's employees, volunteers, and mentors; permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

52. At all times material hereto, Defendant VILLAGE's actions and omissions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, and amounted to conduct equivalent to criminality. At all times material hereto, moreover, Defendant VILLAGE demonstrated such moral turpitude as to cause substantial harm to the community-at-large as well as Plaintiff, and, as such, Defendant's conduct gives rise to punitive damages.

53. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

54. By reason of the foregoing, Defendant VILLAGE is liable to the Plaintiff, for compensatory damages, and punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION
(Breach of Non-Delegable Duty)

55. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

56. Plaintiff, when he a minor, was placed in the care and supervision of the defendant

VILLAGE for the purposes of, inter alia, providing plaintiff with a safe environment in which to live, learn, and grow. There existed a non-delegable duty of trust between Plaintiff and Defendant VILLAGE.

57. Plaintiff was a vulnerable minor when placed within the care of the Defendant VILLAGE.

58. As a consequence, Defendant VILLAGE was in the best position to prevent the sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm he suffered resulting from their sexual abuse. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has endured.

59. Instead, defendant VILLAGE attempted to justify the sexual abuse, claiming that the sexual abuse of a ten-year-old boy was “consensual.”

60. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of Defendant VILLAGE, Defendant breached its non-delegable duty to Plaintiff.

61. At all times material hereto, Garcia was under the supervision, direction and/or control of Defendant VILLAGE.

62. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

63. By reason of the foregoing, Defendant VILLAGE is liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

64. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

65. While he was a minor, Plaintiff was entrusted by his parents to the control and supervision of Defendant VILLAGE. During the times that Plaintiff was entrusted to Garxia, Garcia, was under the supervision and control of Defendant VILLAGE.

66. There existed a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendant VILLAGE. This relationship was based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the Defendant. This entrustment of the Plaintiff to the care and supervision of the Defendant, while the Plaintiff was a children, required Defendant VILLAGE to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect his due to his infancy and vulnerability.

67. Pursuant to their fiduciary relationship, Defendant VILLAGE was entrusted with the well-being, care, and safety of Plaintiff.

68. Pursuant to their fiduciary relationship, Defendant VILLAGE assumed a duty to act in the best interests of Plaintiff.

69. Defendant VILLAGE breached its fiduciary duties to Plaintiff.

70. At all times material hereto, Defendant VILLAGE, was willful, wanton, malicious, reckless and/or outrageous in its disregard for the rights and safety of Plaintiff, and demonstrated such moral turpitude as to cause substantial harm to the community-at-large as well as Plaintiff, and, as such, Defendant's conduct gives rise to punitive damages.

71. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

72. By reason of the foregoing, the Defendant VILLAGE is liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

73. Plaintiff repeat and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

74. As described above, the actions of Defendant VILLAGE, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

75. Defendant VILLAGE's actions endangered Plaintiff's safety and caused him to fear for his own safety.

76. As a direct and proximate result of Defendant VILLAGE's actions and/or inactions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein; including but not limited to, severe mental and emotional distress, which continue to afflict him to this day.

77. By reason of the foregoing, the Defendant VILLAGE is liable to the Plaintiff, for compensatory damages, and punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION
(Breach of Duty *in Loco Parentis*)

78. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

79. While he was a minor, Plaintiff was entrusted by his parents to the control and supervision of Defendant VILLAGE. During the times that Plaintiff was entrusted to Defendant VILLAGE, Garcia, under the supervision and control of Defendant VILLAGE. Defendant VILLAGE owed a duty to children entrusted to them (including Plaintiff) to act *in loco parentis* and to prevent foreseeable injuries.

80. Defendant VILLAGE breached its duty to act *in loco parentis*.

81. At all times material hereto, Defendant VILLAGE was willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in its disregard for the rights and safety of Plaintiff, and demonstrated such moral turpitude as to cause substantial harm to the community-at-large as well as Plaintiff, and, as such, its conduct gives rise to punitive damages.

82. As a direct result of Defendant VILLAGE's conduct, Plaintiff has suffered the injuries and damages described herein, and continues to suffer from such damages to this day.

83. By reason of the foregoing, Defendant VILLAGE is liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE, Plaintiff ALBERT BORERO hereby demands judgment against the Defendant on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but, in any event, in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
September 10, 2019

BY: 

John J. Meehan, Esq.
JOSEPH & NORINSBERG, LLC
Attorneys for Plaintiff
225 Broadway, Suite 2700
New York, N.Y. 10007
(212) 227-5700

Index No.:

Year:

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SUMMONS AND COMPLAINT

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